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7/15 (2)

समक्ष न्यायालय माननीय उच्च न्यायालय , जबलपुर (म0प्र0)

क्रिमनल अपील क्रमांक:--241---/95

(1) गौत-रिहा उर्फ रामाधार उम्र 29 वर्ष बा. बुद्धु
साकिन- करही डोह थाना पुलगांव जिला दुर्ग(म0प्र0)

(2) लेखाराम उर्फ रतीराम सिन्हा उम्र 39 वर्ष बल्द सुकलाल
साकिन- भरगांव थाना अर्जनी जिला रायपुर(म0प्र0)

(3) कोमल राम उर्फ भया राम उम्र 29 वर्ष
साकिन-बाग्तराई थाना गुरूर जिला दुर्ग(म0प्र0):----------अपीलार्थीगण

6529

Filed on 10/5/95
by Shri Sarla Pandey
Advocate

वि रू द्ध

मध्य प्रदेश शासन द्वारा आरक्षी केन्द्र
धमतरी जिला रायपुर (म0प्र0):----------प्रत्यर्थी

R. to D.K.
01.12.95

अपील दंड प्रक्रिया संहिता की धारा 374 (2) के अंतर्गत

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(49)

मामला क्रमांक Cr.A.74-1/95 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

17-8-2006

Mrs. Kiran Jain, counsel for the appellants.

Mr. D.K. Gwalre, Deputy Govt. Advocate with Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 11th March, 1995 passed by the Additional Sessions Judge, Dhamtari in Sessions Trial No.363/92, whereby learned Additional Sessions Judge after holding accused/appellants Gotriha @ Ramadhar, Lekharam @ Ratiram Sinha & Komal Ram guilty for commission of offence under Sections 120-B, 460 & 302 of the I.P.C., sentenced each of the accused to undergo imprisonment for life under Section 302 of the I.P.C.; to undergo imprisonment for life under Section 302 read with Section 120-B of the I.P.C. and to undergo R.I. for ten years under Section 460 of the I.P.C. All the sentences are directed to run concurrently.

The prosecution case, in brief, is that Madan Lunawat (PW-9), the Managing Partner of Amar Talkies Cinema Hall of Dhamtari, lodged the first information report Ex.P-16 at Police Station: Dhamtari on 2nd August, 1992 at 7.20 a.m. to the effect that on the previous day's night at about 9.30 p.m.

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...G.A.741/95 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

he left the cinema hall for his house, next day in the morning at about 6 a.m. sweeper of the cinema hall namely, Surendra came to his house and informed that inspite of his efforts, Chowkidar of the cinema hall is not opening the door, on which he asked Surendra to go back and if the Chowkidar is not opening the gate, then he can enter the cinema hall by scaling the gate. After ten minutes, sweeper Surendra again came back and informed him that by scaling he entered the cinema hall and saw that Chowkidar was lying dead, there was a rope around the neck of the Chowkidar and a piece of cloth in his mouth. On hearing this, he informed Vinod Khandelwal over telephone and immediately reached to the cinema hall. Vinod Khadelwal also arrived and they saw the cinema hall and thereafter, they have come to lodge the report. The body of Chowkidar of the talkies is lying on the ground. There is a rope around the neck of Chowkidar and a piece of cloth in his mouth. The locks of the Office of cinema hall as well as of the Manager are in broken condition. An amount of about Rs.10,000/- to Rs.12,000/- and a change of about Rs.400/- as well as one calculator of Casio make HI 809 on which Amar has been written with ink have been stolen. Rs.4,000/- has also been stolen from the almirah of the Manager.

Receiving this report, the Station House Officer of the Police Station registered offence under Sections 460 & 302 of the I.P.C. and left for the scene of occurrence. He prepared the site plan Ex.P-17 of the place of occurrence. After giving notice to the Panchas, Panchnama Ex.P-1 of the dead body of Pardesi Ram was prepared. Clothes and other articles, which

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

were on the body of deceased Pardesi Ram, were taken into possession under Ex.P-22. Burnt sticks of the matchbox, one shawl and two pieces of Bidi were taken into possession under Ex.P-3 from the place of occurrence. One key was also taken into possession under Ex.P-4. One lock was taken into possession under Ex.P-5. Another lock with key was taken into possession under Ex.P-6. Currency notes and other items were taken into possession under Ex.P-7 from Amar talkies. Accused Gotriha @ Ramadhar gave memorandum Ex.P-8 on 18-8-1992 regarding the currency notes as also the calculator and in pursuance of that, currency notes, one radio, one wrist watch, other house hold articles, one box and other items were recovered under Ex.P-9 at the instance of Gotriha. On 19-8-1992 under Ex.P-10 one receipt book was taken into possession from Ram Kumar Dewangan and another bill book was taken into possession under Ex.P-11 from Panchulal. One raincoat was taken into possession under Ex.P-12. Another raincoat and pair of shoes were taken into possession from Abdul Rehman under Ex.P-13. From Ganga Prasad, currency notes were taken into possession under Ex.P-15. On 20th of August, 1992, second memorandum Ex.P-18 was given by accused Gotriha regarding iron road & Gupti and in pursuance of that iron rod & Gupti were recovered under Ex.P-19. Currency notes of Rs.400/- were recovered from one Hemlal under Ex.P-20. Accused Lekharam @ Ratiram Sinha while in police custody gave memorandum Ex.P-21 regarding currency notes and in pursuance of that Rs.400/- were recovered under Ex.P-22. From accused Lekharam one radio, blanket, full pant and other items were taken into possession under Ex.P-23. While in policy custody, accused Komal

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Ram gave memorandum Ex.P-24 on 3-9-1992 at 9.40 a.m. regarding the money which came to his share and also about the calculator, in pursuance of that, the calculator of Casio make was taken into possession on the same day at about 1.05 p.m. under Ex.P-25. One wristwatch and full shirt of Komal Ram were taken into possession under Ex.P-26. The body of Pardesi Ram was sent for postmortem examination to Government Hospital, Dhamtari, where Dr. A. Kadir (PW-12) conducted postmortem on the body and opined that the cause of death is asphyxia due to suffocation.

After completion of investigation, charge sheet was filed against the accused persons for commission of offence under Sections 460, 302 &120-B of the I.P.C. in the Court of Judicial Magistrate, First Class, Dhamtari, who in turn committed the case to the Sessions Judge, Raipur, from where learned Additional Sessions Judge, Dhamtari, received the case on transfer for trial.

The prosecution in order to establish charge against the accused persons examined 14 witnesses. On the other hand, statements of accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence, pleaded innocence and stated that they have been falsely implicated in the crime. However, learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted and sentenced each of the accused as mentioned in para 1 of this judgment.

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...G.A.741/95... सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard Mrs. Kiran Jain, learned counsel on behalf of the accused/appellants and Mr. D.K. Gwalre, Deputy Govt. Advocate with Mr. Akhil Mishra, Panel Lawyer on behalf of the State/respondent.

The fact of homicidal death of Pardesi Ram has not been disputed by learned counsel for the accused/appellants. Even otherwise, Dr. A. Kadir (PW-12), who conducted postmortem on the body of deceased Pardesi Ram, has stated in his evidence that the cause of death was suffocation and asphyxia which can be caused by tightening of rope around the neck. His report is Ex.P-27. Therefore, in view of the above evidence and the postmortem report it is established that the death of Pardesi Ram was homicidal in nature.

Now, coming to the involvement of the accused/appellants in the crime in question, there is no ocular evidence in this case. Whole case rests on the circumstantial evidence viz.,

(i) recovery of calculator of Casio make of Amar Talkies at the instance of accused Komal Ram;

(ii) recovery of currency notes as well as other items from the accused persons which were purchased by the stolen amount; and

(iii) previous conduct of the accused persons i.e. as per the evidence of Hemlal (PW-7) accused/appellants Gotriha & Komal informed him that they are going to commit theft in the cinema hall and 4-5 days after the incident, accused Gotriha put Rs.200/- or Rs.250/- in his pocket and he was threatened not to disclose this fact to any one.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

It is settled law that in order to rest the conviction based on the circumstantial evidence, the Court is required to ascertain from the circumstantial evidence as to whether the prosecution has been able to establish the involvement of accused in the crime in question based on the following principles laid down by the Hon'ble Apex Court;

1. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
2. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
3. the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
4. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

Now, we shall proceed to scrutinize the evidence adduced by the prosecution in order to connect the accused persons with the crime in question. As far as the recovery of Casio calculator at the instance of accused Komal Ram is concerned, in this connection, the evidence adduced by the prosecution is of Madan Lunawat (PW-9), who was the Managing Partner

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.741/95 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the cinema hall, regarding the theft of currency notes as well as of the Casio calculator. Recovery of calculator has been said to be made at the instance of accused Komal Ram in the presence of Vinod Khandelwal (PW-1) & Appa Rao (PW-11) as also Investigating Officer A.S. Gill (PW-14). After perusing the evidence of these witnesses, we are of the considered opinion that the prosecution has utterly failed in connecting the accused with the crime in question. In the first instance, the calculator was not put to identification parade. Even the manner in which the recovery of calculator has been shown to be effected is doubtful for the following reasons that the incident took place on 1-8-1992 and in the first instance, Gotriha gave memorandum Ex.P-8 on 18-8-1992 in which he gave information that the calculator was thrown by them on the railway station. However, no recovery was effected in pursuance of the said memorandum. Thereafter, on 3-9-1992 at about 9.40 a.m. accused Komal Ram has said to have given information Ex.P-24 regarding the calculator in which he said to have stated that after distribution of money one plastic machine meant for calculation being of no use was thrown on the railway station. The recovery memo Ex.P-25 shows that the calculator was recovered at about 1.05 p.m. on the same day from the railway premises. In the recovery memo it has nowhere been mentioned that from which place of railway station the calculator was recovered and whether the calculator was in a concealed condition. The only thing mentioned is that the calculator was recovered from the railway station premises. When the calculator was thrown in the night of 1-8-1992 then, how that calculator remained in the railway premises for about one

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .Cr.A.741/95.. **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

month two days, has not been explained, as it has not been mentioned in the seizure memo that the calculator was found in a concealed condition. Even in the memorandum Ex.P-24 Komal Ram has simply stated that the calculator was thrown on the railway station. Similar was the memorandum given by accused Gotriha on 18-8-1992.

Vinod Khandelwal (PW-1) in his examination-in-chief has stated that accused Komal Ram gave information that the calculator has been concealed under a stone, but neither it has been mentioned in the seizure memo that the calculator was found in concealed condition under a stone, nor it has been mentioned in the memorandum of information Ex.P-24. Appa Rao (PW-11), another witness to the seizure memo, has stated that Komal Ram gave information that the calculator has been kept in the railway station compound in a stack of wood and he can get recover the same. His evidence is contrary to the evidence of Vinod Khandelwal (PW-1) who has stated that the accused gave information that the calculator is concealed under a stone. This fact has not been written in the memorandum that Komal Ram gave information that the calculator has been concealed in a stack of wood. In cross-examination he has stated that the calculator was recovered from a stack of wood. But as has been mentioned earlier, there is no mention to this fact in the seizure memo.

A.S. Gill (PW-14), the Investigating Officer, in para 11 of his evidence has simply stated that Komal Ram gave information that he has thrown the calculator on the station and he can get recover the same and the same is

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A.741/95. सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Ex.P-24. In pursuance of that at the instance of accused Komal Ram same was recovered. He has not stated that from which place of railway station the calculator was recovered and whether it was concealed under a stone or in a stack of wood.

Therefore, the evidence of two recovery witnesses namely, Vinod Khandelwal (PW-1) & Appa Rao (PW-11) as well as the Investigating Officer is contradictory to each other regarding memorandum and recovery of calculator. Moreover, the calculator was recovered from an open place that too after one month two days and it is said to have been recovered from railway station premises where passengers move very frequently, as such, the recovery of calculator from the railway station becomes doubtful. Apart from that, accused Gotriha had already given information as back as on 18-8-1992 regarding the calculator that it was thrown by them on the railway station. No explanation has been given by the Investigating Officer as to why search was not made or why the calculator was not recovered at the instance of accused Gotriha, at that time. In the circumstances, recovery of calculator at the instance of accused Komal Ram has not been established beyond reasonable doubt and as such, the recovery does not inspire confidence of the Court.

As far as the recovery of currency notes and other items is concerned, the prosecution has not been able to connect the accused persons, as there was no identification mark on the currency notes and the prosecution has not been able to establish the fact that the currency notes

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr. A. 741/95 ~~सन् 200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

which were recovered from the accused persons were of the complainant. As far as the other articles, which were recovered at the instance of the accused persons, is concerned, they were not stolen articles. Even the currency notes, which were recovered from the accused persons, have not been identified that those currency notes were of the complainant. Therefore, these recoveries are also of no use and the accused persons cannot be connected with the crime in question.

As far as the evidence of Hemlal (PW-7) is concerned, he has stated that 2-2½ years before the day of evidence he went to Dhamtari in search of work and when was not able to get work, he went to watch cinema. When he was returning from cinema, accused Komal Ram met him, he took him to a liquor shop where accused Gotriha also met them and both the accused said that let us go to watch the posters, from there they went to Amar talkies where Gotriha & Komal Ram said that they want to commit theft in the talkies, on hearing this, he immediately left the talkies. 2-4 days thereafter, when he was going to his agricultural field, Gotriha met him on the way and put Rs.200/- or Rs.250/- in his pocket and said that he should not disclose to anybody. 2-4 days thereafter, he came to know that the thief has been caught. Coming to know about the accused persons that he accompanied them to see the posters and they gave money to him, he went to the police station so that he may not be fastened in the crime.

The above statement of witness Hemlal does not inspire full confidence of the Court for the reason that in his statement Ex.D-2 made

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.741/95 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

before the Judicial Magistrate, First Class, under Section 164 of the Cr.P.C. and the statement Ex.D-1 made before the Police under Section 161 of the Cr.P.C. he has stated that accused Gotriha told him that they have performed the work of Amar talkies, whereas in his evidence as PW-7 he has not stated so. As per the evidence of PW-7, he has stated that after 2-4 days of the incident, accused Gotriha came to his village and put Rs.200/- or Rs.250/- in his pocket, whereas in cross-examination in para 7 he has stated that thereafter, for 10-15 days he could not meet Gotriha and he did not disclose to Mohit regarding the incident, whereas in the examination-in-chief he has stated that after 2-4 days of the incident money was put by Gotriha in his pocket. Apart from that as PW-7 he has stated that Rs.200/- or Rs.250/- were put in his pocket, whereas in the statement under Section 164 of the Cr.P.C. he has stated that on 15th of August, Gotriha came to his village and offered Rs.100/-, which he denied, and thereafter, he gave Rs.250/-. As per the seizure memo Ex.P-20, Rs.400/- were seized from Hemlal. Whereas only Rs.250/- were given to him, then how Rs.400/- were seized from Hemlal on 20th August, 1992? Moreover, as per the evidence of this witness, no offence was committed in his presence and as has been discussed earlier, the prosecution has not been able to connect the accused persons with the crime in question by any other circumstantial evidence. In the first instance, the evidence of this witness is shaky and contradictory in nature. There is contradiction in his evidence, between examination-in-chief and cross-examination as well as between his earlier statements made

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..C.A.741/95 ~~सन् 200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

before the Police and the Magistrate Exs.D-1 & D-2, respectively, as such, his evidence does not inspire confidence.

Therefore, we are of the considered opinion that the prosecution has utterly failed to bring home the crime alleged against the accused persons. The prosecution has not been able to adduce any evidence through which it can safely be held that the accused were the only persons who were involved in committing the theft of the cinema hall and murder of Pardesi Ram. In the circumstances, the prosecution has not been able to bring home the crime alleged against the accused persons for commission of offence under Sections 460 & 302 of the I.P.C.

As far as the offence under Section 120-B of the I.P.C. is concerned, in order to bring home the offence punishable under Section 120-B, Section 120-A of the I.P.C. defines criminal conspiracy, which envisages that

> "When two or more persons agree to do, or cause to be done,
>
> (1) an illegal act, or
>
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

Therefore, the elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.741/95... सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act. The essence of criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design.

As has been held by the Apex Court in the matter of **E.K. Chandrasenan v. State of Kerala** reported in **(1995) 2 SCC 99**,

> "Conspiracies are not hatched in the open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence."

As has been discussed earlier, the evidence of Hemlal (PW-7) is shaky, contradictory and does not inspire confidence for the reasons given in the earlier part of this judgment. There is no other circumstantial evidence by which it can be held that the prosecution has been able to establish that

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....G.A.741/95.... **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the accused persons in any way entered into a conspiracy and in furtherance thereof the offence of theft was committed in the cinema hall and the murder of Pardesi Ram was committed. In the circumstances, the prosecution has utterly failed to prove charge against the accused/appellants under Section 120-B of the I.P.C. also.

In the result, the appeal succeeds and the same is allowed. The accused/appellants are acquitted of charge under Sections 302, 460 & 302 read with Section 120-B of the I.P.C. and the conviction and sentences imposed upon them under the above sections are set aside. The accused/ appellants namely, Lekharam @ Ratiram Sinha & Komal Ram are on bail. Their bail bonds are discharged and they need not surrender before the trial Court. Accused/appellant Gotriha @ Ramadhar is said to be in custody. He be set at liberty forthwith, if not required in any other case.

Parties are entitled for certified copy of this order.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

Soma

21.8.06 24.8.06

P.T.O.